IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5094 of 2007()

CRIME NO. 25/06 OF KAZHAKUTTAM POLICE STATION

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PETITIONER

SURESH, S/O.SREENIVASAN, THEKKEVILA
VEEDU, NEAR KULATHOOR STATION KADAVU,
VAIKALATHU MURI, ATTIPRA, THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
REPRESENTING CIRCLE INSPECTOR OF POLICE,
KAZHAKKUTTAM POLICE STATION.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5094 of 2007

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Dated this the 17th day of September, 2007

O R D E R

Application for regular bail. The petitioner faces allegations, inter alia, under Section 302 r/w. 120B I.P.C. Altogether there are 8 accused persons. Petitioner is the first accused. The alleged incident took place on 16.1.2006 at about 8 a.m. The deceased is one Vinod. He allegedly owed allegiance to a goonda gang headed by one Krishnakumar. The petitioner, Suresh, is allegedly heading another goonda gang. On account of inter-group rivalry and animosity, the petitioner is alleged to have played a dominant role in the liquidation of the said Krishnakumar as also Vinod. The petitioner and the followers in that group, in two separate incidents, murdered those persons.

2. The incident in this case took place on 16.1.06. The deceased was attacked by a group of eight persons armed with dangerous weapons. He breathed his last on the date of incident itself. The petitioner could not be arrested. The police made

exhaustive efforts to arrest the petitioner. Long later, on 18.4.2007 he was arrested and his arrest was recorded in this crime. He was required in the other crime also, relating to the murder of Krishnakumar, the rival goonda gang leader. In that case the petitioner has been granted bail by default, as final report could not be filed within 90 days. In the present case investigation is complete. Final report has also been filed. Cognizance has been taken by the committal court. The petitioner has been produced before the committal court. The case has not been committed so far.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has been unnecessarily and falsely implicated. The petitioner has remained in custody from 18.4.2007. In the F.I.R. the petitioner is not named. The petitioner may, in these circumstances, be released on bail now, he having remained in custody from 18.4.2007 in the present crime, submits the counsel.

4. The learned Prosecutor opposes the application vehemently. He submits that the presence of the petitioner was secured with great difficulty by the police. He has remained at large from 16.1.2006, the date of the crime. The petitioner is a notorious criminal. He has several crimes to his

credit. The learned Prosecutor, as directed by this court, has ensured that a statement is filed by the Investigating Officer, in which there is detailed narration of the cases in which the petitioner is involved. The learned Prosecutor submits that it is true that in the case relating to the murder of Krishnakumar, the rival goonda gang leader, the petitioner has been released on bail. But such release was on account of the reason that the final report had not been filed within 90 days. If the petitioner were released, he will not be available for trial. It is likely that he may intimidate the witnesses. His criminal antecedents may be taken into consideration. The authorities are contemplating steps to ensure that the petitioner is detained under the provisions of the Kerala Anti-Social Activities (Prevention) Ordinance, 2007. In any view of the matter, the petitioner may not be released on bail, submits the learned Prosecutor.

5. I have considered all the relevant inputs. In the peculiar facts and circumstances of this case, a report of the learned Magistrate was called for as to why the proceedings are not expedited. The learned Magistrate has reported that out of the eight accused, only the petitioner and another have appeared and the court is waiting for appearance of the other accused. The

learned Magistrate in the report submits that the case can be committed within a period of one month.

6. Having anxiously considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. I am satisfied that the petitioner does not deserve to be enlarged on bail at this stage. It is true that bail and not jail is the ordinary rule. But the ordinary rule must certainly admit of exceptions when such deviation is required in the peculiar facts and circumstances of the case. I am of the opinion that this is eminently one such case where the rule cannot be followed notwithstanding the fact that the investigation is complete and final report has already been filed. I am satisfied that there can be a direction to the learned Magistrate to expedite the committal. I am further satisfied that the Sessions Judge can also be directed to ensure that the trial in this case takes place as expeditiously as possible.

7. This application is hence dismissed. But I may hasten to observe that the petitioner shall be at liberty to move this court for bail again if committal does not take place within a period of two months and trial of the case does not commence within six months. Such application for bail shall be considered on merits at that stage.

8. Communicate copy of the order to the Magistrate and the Sessions Judge concerned.

(R. BASANT)
Judge

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